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April 14, 2010

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation: Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act, WC Docket No. 09-222*

Dear Ms. Dortch:

Today, Joseph Gillan and the undersigned, on behalf of the Section 271 Coalition, met with Carolyn Fleming Williams, Senior Deputy Director, Office of Communications & Business Opportunities, to discuss the petition for expedited rulemaking filed by the Section 271 Coalition in the above-captioned proceeding.

During this meeting, we discussed the fact that competitive telecommunications service providers must continue to rely, in many locations, on Bell Operating Company ("BOC") loops and transport facilities to reach end users and aggregation locations. Access to these facilities, pursuant to the Section 271(c)(2)(B) Competitive Checklist, is therefore essential to enable narrowband and broadband competition. We explained that in the petition, the Coalition proposed specific rules to govern the provision of Checklist network elements by the BOCs that would establish clear requirements describing what constitutes each element. The proposed rules also would give effect to the just and reasonable rate standard that the Commission has previously determined applies to Checklist elements.

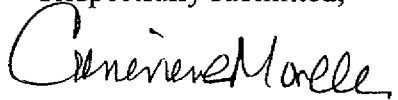
The attached document describes the specific points addressed during the meeting.

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Please contact the undersigned at (202) 342-8531 if you have any questions regarding this letter.

Respectfully submitted,

A handwritten signature in cursive script, reading "Genevieve Morelli". The signature is written in black ink and is positioned below the typed name.

Genevieve Morelli

Attachment

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# Section 271 Petition for Expedited Rulemaking

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**Section 271 Coalition**  
**April 14, 2010**

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## Section 271 Petition for Expedited Rulemaking

- Unbundled elements are used by competitive carriers to provide services to small business customers.
- Many competitive carriers using unbundled elements to provide service are themselves small businesses.

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## Section 271 Petition for Expedited Rulemaking

- 1996 Telecom Act imposed *additional* network unbundling obligations on the BOCs
  - Separate from Sec. 251
  - No restrictions
  - Ongoing
  - Rates and terms must be just, reasonable and not unreasonably discriminatory

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## Section 271 Petition for Expedited Rulemaking

- Access to network elements under Sec. 271 is becoming increasingly important
  - Access under Sec. 251 decreasing
  - Forbearance
  - Mobile wireless and long distance carriers facing increased pressure from AT&T and Verizon
  - Data services increasing in importance

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## Section 271 Petition for Expedited Rulemaking

- The BOCs are reaping the rewards of the '96 Act without meaningful compliance with Sec. 271 obligations
  - Ten years since first in-region interLATA entry application granted
  - Commission has never reviewed how Sec. 271 is working in a post-TRRO environment where wireless and data services are of increasing importance

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## Section 271 Petition for Expedited Rulemaking

- Federal courts have determined the FCC has exclusive jurisdiction to administer Sec. 271
- The FCC has declined to exercise its authority
- The BOCs have exploited this regulatory vacuum



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## Section 271 Petition for Expedited Rulemaking

- Purpose of the petition is to provide the FCC a framework for fulfilling its statutory obligation under Sec. 271
  - Simple, easy to administer rules

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# Section 271 Petition for Expedited Rulemaking

## ■ Proposed rules:

- Ensure Sec. 271 offerings are free of restrictions and discrimination
- Ensure rates for Sec. 271 offerings are just and reasonable
- Establish an administrative device for Sec. 271 offerings

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# Section 271 Petition for Expedited Rulemaking

## ■ Rates

- Rules propose a safe-harbor methodology
  - Based on New Services Test
    - Direct cost plus reasonable allocation of common cost
    - Direct cost = state-determined UNE costs (minus state-approved common cost allocation)
    - Common cost safe harbor of 22%
- Requires a minimum of regulatory oversight

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# Section 271 Petition for Expedited Rulemaking

## ■ Administration

- Federal Statement of Generally Available Terms (SGAT)
  - Required
- Negotiated agreements
  - Voluntary but must be filed